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EXAMINER

GILLIGAN, CHRISTOPHER L

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/660,495
Filing Date: September 12, 2000
Appellant(s): KOEPPEL ET AL.

MAILED

SEP 05 2007

GROUP 3600

Joseph E. Palys
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/13/05 appealing from the Office action mailed 10/20/04.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The amendment after final rejection filed on 4/15/05 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,317,782	HIMMEL et al.	11-2001
6,401,075	MASON et al.	6-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 40-46, 48-57, 59-68, 70-72 and are rejected under 35 U.S.C. 103(a) as being unpatentable over Himmel et al., U.S. Patent No, 6,317,782 in view of Mason et al., U.S. Patent No. 6,401,075.

As per claim 40, Himmel teaches a method for performing dynamic Web-based in-view monitoring, the method comprising the steps of: appending a client side routine to a Web page provided by a Web server (see column 8, lines 13-22); sending the Web page to a plurality of client nodes (see column 8, lines 22-28 and Figure 5); and displaying the Web page to a plurality of users located at respective client nodes, and in response to the Web page being displayed to each user, each client node initiating the client side routine to perform the steps of: detecting in-view user activities associated with each respective user browsing the Web page, wherein the in-view user activities are associated with in-view response data reflecting whether or not the content data was viewable to each respective user (see column 8, lines 22-28); collecting data reflecting the in-view user activities (see column 8, lines 40-53); detecting a client side trigger event (see column 8, lines 54-59); and sending the collected data to the Web server in response to the detected client side trigger event (see column 8, lines 59-65); and analyzing the collected data to determine user in-view characteristic data reflecting whether the content

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was viewable or partially viewable or partially viewable by the respective user (see column 9, lines 60-63). Himmel does not explicitly teach modifying the content of the Web page based on the user in-view characteristic data. Mason teaches modifying the content of the Web page based on the user in-view characteristic data (see column 6, lines 27-45). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the system of Himmel. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of enhancing the advertising capabilities of Himmel by enabling modification at any time midstream during a specific ad placement (see column 2, lines 14-17).

As per claim 41, Himmel in view of Mason teach the method of claim 40 as described above, wherein the in-view user activities includes at least one of mouse pointer movements, screen scrolling, hyperlink selections, icon selections, data entry, time data associated with mouse pointer position, time data associated with content position and time data associated with screen scrolling (see column 9, lines 60-63).

As per claim 42, Himmel in view of Mason teach the method of claim 40 as described above, wherein the in-view user activities includes non-activated in-view response data reflecting whether the content data was viewable or partially viewable to each respective user, wherein the non-activated in-view response data is user response data that is not associated with a user activating a button, icon or hyperlink on the Web page (see column 9, lines 60-63).

As per claim 43, Himmel in view of Mason teach the method of claim 40 as described above, wherein the client side routine is appended to a URL placed on the Web page (see column 8, lines 20-22).

As per claim 44, Himmel in view of Mason teach the method of claim 40 as described above, wherein the collected data is stored in a client side data store and each client side trigger

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event is associated with each respective client side data store being filled with the collected data above a predetermined threshold level (see column 8, lines 54-65).

As per claim 45, Himmel in view of Mason teaches the method of claim 40 as described above, wherein the client side trigger event is associated with a respective user closing a browser application executing at a respective client node (see column 10, lines 6-26).

As per claim 46, Himmel in view of Mason teaches the method of claim 40 as described above, wherein each client side trigger event is associated with a respective user, located at a respective client node, selecting a URL displayed on the Web page (see column 9, lines 28-41).

As per claim 48, Himmel teaches the method of claim 40 as described above. Himmel does not explicitly teach analyzing the collected data at the Web server; generating billing records based on the analysis of the collected data; and sending the billing records to at least one of a plurality of third party nodes. Mason teaches analyzing the collected data at the Web server (see column 6, lines 27-30); generating billing records based on the analysis of the collected data (see column 5, lines 4-9); and sending the billing records to at least one of a plurality of third party nodes (see column 5, lines 9-32). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate these features into the system of Himmel. One of ordinary skill in the art would have been motivated to incorporate these features for the purpose of enhancing the billing functions of Himmel (see column 3, lines 42-53 of Himmel).

As per claim 49, Himmel in view of Mason teaches the method of claim 48 as described above. Himmel does not explicitly teach the content data includes a plurality of third party content data, and wherein each third party content data is provided by a respective one of the plurality of third party nodes. Mason teaches the content data includes a plurality of third party content data, and wherein each third party content data is provided by a respective one of the

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plurality of third party nodes (see column 5, lines 20-31). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the system of Mason for the reasons given above with respect to claim 48.

As per claim 50, Himmel in view of Mason teach the method of claim 40 as described above, wherein the in-view user activities are mouse pointer position data (see column 9, line 60 – column 10, line 5).

Claims 51-61 contain substantially similar system limitations to method claims 40-50 and, as such, are rejected for similar reasons as given above.

Claims 62-72 contain substantially similar computer readable medium limitations to method claims 40-50 and, as such, are rejected for similar reasons as given above.

(10) Response to Argument

In the Appeal Brief filed , Appellant makes the following arguments:

A) Himmel does not teach collecting data including the proportion of content actually viewable to a user.

B) Himmel does not tech a client side routine appended to a URL placed on a web site.

C) Himmel does not teach each client side trigger event is associated with each client side data store being filled with the collected data above a predetermined threshold level.

D) Himmel does not teach each client side trigger event is associated with a respective user closing a browser application executing at a respective client node.

E) Himmel does not teach each client side trigger event is associated with a respective user, located at a respective client node, selecting a URL displayed on the Web page.

F) Mason does not teach generating billing records based on the collected data and sending the billing records to third party nodes.

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G) Himmel does not teach in view user activities that are mouse position data.

Examiner will address Appellant's arguments in sequence as they appear in the brief.

Appellant's argument A:

In response to Appellant's first argument, it appears that Appellant's are taking the position that data reflecting "the proportion of content actually viewable to a user" is limited to data that reflects a portion of an image on a screen that is viewable. In other words it appears that Appellant's are arguing that the data is limited to a percentage or fraction of visible space on a screen. The Examiner respectfully submits that such an interpretation is far more limiting than anything recited in the claim. Therefore, it is maintained that data reflecting visible time of content, as taught by Himmel, is a form of "proportion of content actually viewable to a user," given the broadest reasonable interpretation to one of ordinary skill in the art. For example, one of ordinary skill in the art would readily recognize that 5 minutes of visible time of content is a larger "proportion of content actually viewable to a user" than 3 minutes of visible time of content.

In addition, even assuming, *arguendo*, that Appellant's far more limiting interpretation is correct, it is still respectfully maintained that Himmel teaches this limitation. For example, in one embodiment, Himmel indicates that visible time is only recorded when content is completely viewable (see column 8, lines 50-53). In this case, the visible time recorded in Himmel reflects a complete or 100% "proportion of content actually viewable to a user."

Finally, although the claim recites collecting data reflecting whether the content was "partially viewable" to a user, which Himmel arguably does not explicitly teach, the only limitations directed to "partially viewable" content are only recited in the alternative. Therefore, the prior art need not teach these limitations to render the claim obvious.

Appellant's argument B:

In response to Appellant's second argument, the Examiner respectfully submits that the user initially requests a web page via a corresponding URL (see column 9, lines 28-29). Associated with this requested web page and corresponding URL is the Advertising Control Module which automatically downloads to the client in response to requesting the URL (see column 9, lines 28-30). Since the Advertising Control Module is so clearly associated with the URL and is automatically downloaded in response to requesting the URL, the Examiner respectfully interprets the Module to be "appended" to the URL, given the broadest reasonable interpretation to one of ordinary skill in the art.

Appellant's arguments C-E:

In response to Appellant's third through fifth arguments, it should first be noted that these claims are only limited to certain actions or events that are associated with the trigger event. In other words, each of the recited actions or events do not necessarily define the actual trigger event or define when data is to be sent to the server. Rather they only limit the claim to actions or events that are "associated" with the trigger event. It is, therefore, respectfully submitted that each of the recited events or actions are in some way "associated" with the trigger event in Himmel. For example, since the Advertising Control Module stores data on the client side until a predetermined threshold level (interval time) is reached before sending the data to the server (see column 8, lines 54-65), it is submitted that the trigger event is "associated" with a client side data store being filled with the collected data above a predetermined threshold level. In addition, since Himmel teaches sending data, recorded in a Cookie, to the server after a user reconnects to the Internet, it is submitted that the trigger event

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is “associated” with a respective user closing a browser application executing at a respective client node. Finally, since Himmel teaches that a user must select a URL to download the Advertisement Control Module (see column 9, lines 28-30), it is submitted that the trigger event is “associated” with a respective user, located at a respective client node, selecting a URL displayed on the Web page.

Appellant's argument F:

In response to Appellant's sixth argument, it should first be noted that these rejections are based upon the combined teachings of Himmel and Mason. As described above, Himmel teaches “collecting data” as recited in the claims. In addition, Mason teaches billing third party nodes (i.e. advertisers) based on collected data (see column 5, lines 4-32). Therefore, given the combined teachings of Himmel and Mason, where the combination does not change their respective functionality and yields predictable results, it is respectfully maintained that the claims are obvious in view of these two references.

Appellant's argument G:

In response to Appellant's final argument, it is respectfully submitted that mouse pointer position data is inherently a part of the data collected in Himmel. Himmel teaches that the browser window includes vertical and horizontal scroll bars (see column 8, lines 9-13). In addition, the visible time data is recorded when an advertisement come into view (see column 8, lines 50-53). Since, according to Figure 6, the web page 94 is longer than the browser viewing area 600, advertisements become visible by scrolling them into view. It is old and well known in the art that this is accomplished by utilizing a mouse pointer in conjunction with scroll bars view different areas of a web page. Therefore, data reflecting visible time, which reflects that an

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advertisement is in view, also reflects that a mouse pointer is in a certain region of the browser (the location of the scroll bar).

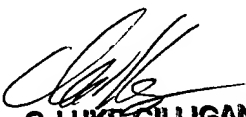
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


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